

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

***In re* FLINT WATER CASES**

**Civil Action No. 5:16-cv-10444-JEL-
(consolidated)**

Hon. Judith E. Levy

**UPDATED REPORT OF SPECIAL MASTER REGARDING REVISED
DATA ON TIMELY AND VALID OPT-OUTS FROM THE CLASS
PORTION OF THE PARTIAL SETTLEMENT**

The following report provides an update to the previous *Report of Special Master on Evaluation of Opt-Out Forms Submitted in Connection with the Partial Settlement*, ECF No. 1998 (the “Report & Recommendation”). This update is provided pursuant to a change in circumstances of one individual who filed both a registration form and an opt-out form and did not previously respond to inquiries to confirm his position.

On January 21, 2021, the Court issued its *Opinion and Order Granting Plaintiffs’ Motion to Establish Settlement Claims Procedures and Allocation and for Preliminary Approval of Class Settlement Components [1318] and Granting Plaintiffs’ Motion for an Order Adopting the Proposed Motion for Approval of*

Wrongful Death Settlement [1334], ECF No. 1399, PageID.54398-54469.¹ In that Order, the Court established March 29, 2021 as the deadline for those persons or entities who comprise the proposed settlement class to register for, object to, or opt out of the settlement. Registration forms and opt-out forms were to be submitted to the Claims Administrator to be logged and compiled.

On October 25, 2021, I filed the *Report of Special Master on Evaluation of Opt-Out Forms Submitted in Connection with the Partial Settlement*, ECF No. 1998, PageID.68630-68646 (the “Report & Recommendation”). The Report & Recommendation provided a categorization of the opt-out submissions in accordance with the provisions of Article 19 and a recommendation with respect to the treatment of those who erroneously submitted opt-out forms. As described in the Report & Recommendation:

A total of 195 opt-out forms were submitted timely (i.e., received or postmarked on or before March 29, 2021). Of these timely opt-out forms, 30 were submitted by Individual Plaintiffs who are not counted as opt-outs under Article 19 of the ASA because they are not class members, and 14 of the forms do not meet the requirements of a valid opt-out under the ASA because the individual did not check the box confirming the desire to opt-out and/or did not sign the opt-out form. Of the remaining 151 individuals who submitted opt-out forms, 39 advised Class Counsel that they intended to participate in the settlement and completed the opt-out form by mistake. Of those 39 individuals, three advised that they were attempting to register for

¹ All capitalized terms herein have the same meaning set forth in the Amended Settlement Agreement that the Court.

themselves and their spouse but mistakenly used the opt-out form and not the registration form. Some of these individuals also submitted a registration form and some completed the opt-out form believing it was in fact a registration form. After accounting for the circumstances above, there are 112 individuals or entities that timely completed the opt-out form as required and have indicated that they intended to opt-out of the settlement class.

Report & Recommendation, PageID.68632-68633.

On November 10, 2021, the Court issued its *Opinion and Order Granting Final Approval of a Partial Settlement, Granting Certification of a Settlement Class, Granting Appointment of Settlement Class Counsel [1794], Denying Objections, and Adopting the Report and Recommendation [2006]*, ECF No. 2008, PageID.69537-69714 (“Final Approval Order”).

On November 12, 2021, the Court issued its *Order Adopting Report and Recommendation [1998]*, ECF No. 2010, PageID.69722-69724. The Order stated, *inter alia*, that, after accounting for those that do not meet the requirements of a valid opt-out for the reasons stated in the Report & Recommendation, “the Special Master determined that there are 112 individuals or entities that timely completed the opt-out form and have indicated that they intended to opt-out of the settlement class.” *Id.*, PageID.69723.

The Special Master has now been notified that one of the 112 individuals identified as opt-outs has advised that he did not intend to opt out and in fact

submitted the opt-out form in error. Exhibit 1 to this Updated Report is the Declaration of Leslie Kroeger (“Kroeger Declaration”), dated February 22, 2022. The Kroeger Declaration states that one individual, Dale Clinton, was registered for the partial settlement with the assistance of counsel on or about March 5, 2021. Kroeger Decl. ¶3. He also separately and on his own accord filed an opt-out form dated March 9, 2021. *Id.* Multiple attempts were made to contact Mr. Clinton to clarify his intent, but those efforts were unsuccessful. *Id.* Because he failed to clarify his intent, he was deemed to be an opt-out for purposes of the Report & Recommendation. Mr. Clinton has since confirmed his wish to participate in the Settlement Program and he has requested that his opt-out form be withdrawn. Kroeger Decl. ¶4.

Although Mr. Clinton’s clarification was delayed, he is in the same position as other individuals who submitted both a registration and an opt-out form in error. Accordingly, I recommend that Mr. Clinton be permitted to withdraw his opt-out and participate in the Settlement Program. If the Court accepts this recommendation, then the number of opt-outs will be reduced by 1 to 111. Exhibit 2 (attached hereto) is the list of the 111 individuals or entities who constitute the opt-outs if this recommendation is approved.

Respectfully submitted,

Dated February 24, 2022

/s/ Deborah E. Greenspan

Deborah E. Greenspan

Special Master

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CERTIFICATE OF SERVICE

I certify that on February 24, 2022, I electronically filed the foregoing document with the Clerk of the Court using the Court's ECF system, which will send notification of such filing to attorneys of record.

Dated: February 24, 2022

/s/ Deborah E. Greenspan

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Special Master

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